



# University of Hawaii at Manoa

Environmental Center  
Crawford 317 • 2550 Campus Road  
Honolulu, Hawaii 96822  
Telephone (808) 948-7361

RL:0758A

## SB 2860 SD 1 RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Statement for  
House Committee on  
Planning, Energy, and Environmental Protection  
Public Hearing - March 24, 1988

By  
John Harrison, Environmental Center  
Jacquelin Miller, Environmental Center  
Ray Tabata, Sea Grant  
Ralph Moberly, Geology and Geophysics  
Casey Jarman, School of Law

SB 2860 SD 1 would amend HRS Chapter 343 by adding a new section titled Advisory Opinions. The purpose of this addition would be to provide specific language to reflect the council's authority to issue advisory opinions as to the applicability of any statutory provision of this Chapter or of any rule or order adopted by the council in matters pursuant to this Chapter. The bill also deletes paragraph (9) of HRS 343-6 (a) which is a duplicate of paragraph (3) of the same section. Our statement on this bill does not reflect an institutional position of the University of Hawaii.

As presently drafted, the statutory amendment relative to advisory opinions is unnecessary. The Environmental Council already has the right to issue opinions on matters or rules promulgated pursuant to Chapter 343. As indicated in our earlier testimony the need is for specific statutory clarification of the authority of the Environmental Council to issue declaratory rulings.

The Environmental Council already has the statutorily mandated authority under HRS 343-5(c), to issue a declaratory ruling on the nonacceptance of an EIS. In addition, the council's Rules of Practice and Procedure (Title 11, Chapter 201) issued under statutory mandate (HRS Chapter 343-6) clearly convey authority to issue declaratory orders "as to the applicability of any statutory provision or any rule or order of the council". These rules were approved and signed by former Governor Ariyoshi on November 25, 1985 and were further approved as to form by the Attorney General's Office at that time.

However, on February 16th, 1988, the Attorney General issued an opinion that the existing statutory language "does not provide the council with the authority to adopt rules which define the concept of significant [environmental] effect" even though such a concept is a specific provision of Chapter 343 defined in Section 343-2 and referenced in Sections 343-5(b), (c), and 343-6(a) 7.

Thus, there has existed over the past several years a clear divergence of opinion within the AG's Office as to the meaning of the statutory language. Our environmental legal specialist has noted that such diversity of legal opinion is not uncommon in cases where statutory language is non-specific to the issue in question. As a result, we perceive a need to include specific language in Chapter 343 which affirms the authority of the council to issue declaratory rulings covering the scope of the statutory provisions of Chapter 343. Consequently, we propose that SB 2860 SD 1 be amended to:

343- Declaratory Rulings and Advisory Opinions. On petition of an interested person or agency, or on its own motion, the council may issue a declaratory order or an advisory opinion as to the applicability of any statutory provision of this chapter or of any rule or order promulgated by the council in matters pursuant to this chapter.

The Environmental Center has contributed for many years to the development of Hawaii's environmental statutes. We would be pleased to provide whatever assistance is requested in the further consideration of an amended version of this bill.